

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

TEXAS-ROSEWIN-MIDWAY, INC.,

Plaintiff,

VS.

SCOTTSDALE INSURANCE CO.,
ET AL.,

Defendants.

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NO. 4:97-CV-758-A

O R D E R

Came on for consideration the above-captioned cause in which Texas-Rosewin-Midway, Inc., ("TRM") is plaintiff and Scottsdale Insurance Company ("Scottsdale") is defendant.¹ On October 9, 1997, TRM filed its objections to subpoena duces tecum and deposition by written questions and motion for protective order. On October 27, 1997, Scottsdale filed a motion to compel and response to TRM's motion for protective order. As of this date, TRM has not filed a response to Scottsdale's motion to compel. The court, having considered the motions, the record, and applicable authorities, finds that Scottsdale's motion to compel should be granted, and that TRM's motion for protective order should be denied.

Assuming arguendo that TRM could satisfy its burden of establishing the applicability of the attorney-client privilege and/or attorney work product immunity to the information sought

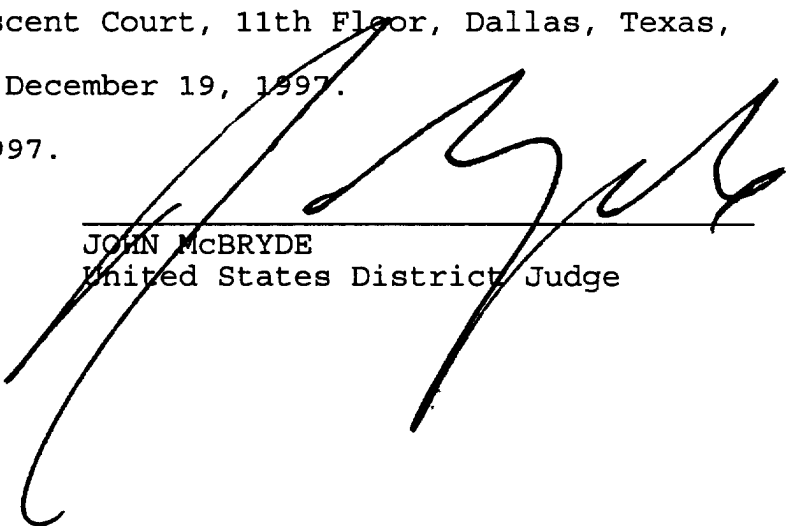
¹Scottsdale is the only remaining defendant as Investigative Consultants, Inc., was dismissed from the suit by order signed November 14, 1997.

by Scottsdale's subpoenas duces tecum, the court finds that the information nevertheless falls squarely within the "offensive use waiver" exception, thereby vitiating any claims of protection by TRM with regard to such information. See Republic Ins. Co. v. Davis, 856 S.W.2d 158, 163 (Tex. 1993); see also Marathon Oil Co. v. Moye, 893 S.W.2d 585, 590 (Tex. App.--Dallas 1994, orig. proceeding) (citing Owens-Corning Fiberglass v. Caldwell, 818 S.W.2d 749, 752 (Tex. 1991)). Therefore,

The court ORDERS that:

- (1) Scottsdale's motion to compel be, and is hereby, granted;
- (2) TRM's motion for protective order be, and is hereby, denied; and
- (3) TRM make available for inspection and copying all documents responsive to Scottsdale's subpoenas duces tecum at the office of THOMPSON, COE, COUSINS & IRONS, L.L.P., 200 Crescent Court, 11th Floor, Dallas, Texas, by 5:00 p.m. on December 19, 1997.

SIGNED December 4, 1997.



JOHN MCBRYDE
United States District Judge